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IN THE

Supreme Court of the United States
October Term, 1977**No. 77-1463**

PATRICIA ROBERTS HARRIS,
SECRETARY OF THE DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT, *et al.*,
Petitioners.

v.

SADIE E. COLE, *et al.*,
Respondents.

On Petition For a Writ of Certiorari To the United States
Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

Respondents, former tenants of a HUD-owned housing project, are filing this opening brief pursuant to an agreement with the Solicitor General, approved by the Court on July 7, 1978, to enable simultaneous filing with the displaced tenants who are petitioners in *Alexander, et al. v. U.S. Department of Housing and Urban Development, et al.*, No. 77-874, with which this case is consolidated, and likewise to enable the Solicitor General to file a single responsive brief covering both cases.

OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 571 F.2d 590 (1977) and is also reproduced as Appendix A to the petition for a writ of

certiorari. (pp. 1A-49A)¹ The opinion of the District Court (App. 86-88) (1975) is unreported.² Two prior opinions of the District Court are reported at 389 F. Supp. 99 (1975) and 396 F. Supp. 1235 (1975).

JURISDICTION

The judgment of the Court of Appeals was entered on November 14, 1977. On February 3, 1978 Mr. Justice Brennan extended the time within which the Solicitor General might file a petition for a writ of certiorari to and including April 13, 1978. The petition was filed on that date and granted on June 19, 1978. The Solicitor General invokes the jurisdiction of this Court under 28 U.S.C. § 1254 (1) (1976). On July 7, 1978 the time for filing opening briefs was extended to September 5, 1978.

QUESTION PRESENTED

When the Department of Housing and Urban Development acquires a subsidized housing project after default by the project's sponsor and, thereafter, HUD orders the tenants evicted so that it can, to eliminate blight, demolish the buildings and sell the property for construction of middle-income housing in accordance with the city's "master plan," are the evicted families "displaced persons" entitled to relocation services under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970?

STATUTE INVOLVED

Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. § 4601(6), provides:

¹Citations to the Court of Appeals' decision will be to "571 F.2d at ____" and as well to the Appendix to the petition ("p. ____A").

²References to the Joint Appendix will be cited as "App. ____" to distinguish them from references to the Appendix to the petition for a writ of certiorari. References to portions of the record not reproduced in the Joint Appendix will be cited as "R. ____."

"The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;***"

STATEMENT OF THE CASE

Sky Tower is a multifamily housing project located in the Anacostia section of Washington, D.C. The project had been under wholly private ownership for some 20 years when, in 1968, it was considered for rehabilitation and inclusion in a new Federal housing program pursuant to Section 236 of the National Housing Act. (R. 21, Humphrey Aff. ¶¶3, 9) Upon inclusion in the program, Sky Tower would be owned and operated by Housing Development Corporation ("HDC"), a nonprofit corporation which had been formed in 1965 to promote the development of housing for low-income families in the District of Columbia. (Id. ¶¶ 5, 6)³

A. **HUD Approval of the Rehabilitation Project**

As is customary, Sky Tower was carefully inspected (on three occasions) by architects and appraisers of the Federal Housing Administration ("FHA"), the agency within the Department of Housing and Urban Development ("HUD") which is responsible for administering the Section 236

³HDC formed a subsidiary corporation, Anacostia No. One, Inc., (also nonprofit) to act as the formal holder of title and signatory to contracts. (App. 45) For convenience, reference herein will be to HDC alone, without distinguishing between it and its subsidiary.

program. (*Id.* ¶7 & Exh. B) FHA concluded that the 19 buildings in Sky Tower were suitable for rehabilitation. A factor of considerable importance to FHA was the intended conversion of Sky Tower's 217 units, most of which contained only one or two bedrooms, into 150 units to accommodate larger families; the acute shortage of housing for low-income families in the District of Columbia was especially dramatic for large families. (R. 7, Humphrey Aff. ¶4; R. 21, Humphrey Aff. ¶3; App. 44-45)

In 1969, HUD gave preliminary approval to the Sky Tower rehabilitation project, subject to HUD's approval of final architectural plans and other conditions. (App. 45) After negotiations between HDC and FHA over construction cost estimates and the like, HUD issued its final commitment under Section 236, and settlement occurred in May of 1971. (R.21, Humphrey Aff. ¶9 & App. B)

In approving Sky Tower for Section 236 rehabilitation, HUD agreed to provide three types of financial support. First, HUD agreed to insure a private mortgage loan for \$2,962,800 to be made to HDC by a private lender to enable HDC to acquire the property and perform the rehabilitation work.⁴ (*Id.*) In addition, HUD agreed to subsidize HDC so that it would end up paying as little as one percent interest on the loan. (12 U.S.C. § 1715z-1) Finally, HUD agreed to provide financial assistance to a number of tenants at Sky Tower by making "rent supplement payments" to HDC in amounts prescribed by FHA regulations. (R.21, Humphrey Aff. ¶6 & Exh. A)

Upon receiving HUD's approval of the Sky Tower rehabilitation, HDC acquired the property and executed a

⁴Although the original lender, Walker & Dunlop, sold the loan to Federal National Mortgage Association ("FNMA") pursuant to a commitment FNMA issued before settlement took place, Walker & Dunlop retained the responsibility to service the loan, as is customary, and is thus treated as the lender or mortgagee in this statement. (R.21, Humphrey Aff. App. B)

\$1,415,275 construction contract (on an FHA form) for the rehabilitation work. (*Id.* ¶10)

B. Events That Led To HUD's Decision to Acquire Sky Tower

HDC's contractor defaulted in early 1972. A new contractor was retained after HUD agreed to increase its mortgage insurance commitment by \$285,000 to cover increased costs. (*Id.* ¶¶ 11, 12)

Then, late in 1972, the second contractor, Cee Bee Contractors, Inc., stopped work. (*Id.* ¶ 13) At this time, all of the rehabilitation work was complete on eight buildings, approximately 50 percent of the work had been accomplished on three others, and work had not started on eight buildings. (*Id.* ¶29) In a separate action on the construction contract, Judge Sirica found that responsibility for the second contractor stopping work "rests squarely on the shoulders of FHA, whose unreasonable delays in processing Cee Bee's change order requests and whose obstinate refusal to grant the extensions of time made necessary by the defective work of the previous contractor frustrated Cee Bee's ability to complete the project." *Cee Bee Contractors, Inc. v. Anacostia No. One, Inc.*, No. 138-73 at 20 (D.D.C., filed Mar. 8, 1978).

HDC urged HUD to maintain its mortgage insurance, interest subsidy and rent supplement agreements in force. (R.7, Humphrey Aff. ¶9; R.21, Humphrey Aff. ¶¶17, 24 & Exh. C) HDC proposed that it act as its own general contractor, thus achieving some cost savings, and opined that it could finish the rehabilitation for less than the unexpended mortgage loan balance. (R.21, Humphrey Aff. ¶17) The lender and FHA, although not disagreeing with HDC's projections, estimated that the delay caused by interruption of the

work would mean that interest payments would be greater than originally expected and that, as a result, the loan balance would be \$100,000 short of total costs. (*Id.* §§ 19, 20) HDC, however, offered to put up that amount out of its \$350,000 in working capital. (*Id.* § 17) In March of 1973, the lender agreed to continue making advances on the loan if HUD would maintain its insurance and other commitments in force. (*Id.* § 19 & Exh. D)

HUD refused to do so. Although FHA was responsible for the projected delay, HUD concluded that the estimated \$100,000 cost overrun would increase the rents HDC would have to charge and that Sky Tower could no longer be operated successfully as a Section 236 project. (*Id.* §§ 20-23 & Exh. E) HUD then exercised its rights under the mortgage insurance contract: It acquired the mortgage from the lender, foreclosed on the mortgage, and bought the property at the foreclosure sale. (*Id.* § 26) As District Judge Gesell found, HUD "insisted that the property be foreclosed," 389 F. Supp. at 101.⁵

⁵The Government did not challenge this finding in the Court of Appeals, and that court accordingly had no occasion to pass upon the finding under the standards laid down in FED. R. CIV. P. 52(a). Nevertheless, the dissenting judge concluded that HUD's foreclosure and acquisition of Sky Tower were "involuntary" in that it had no other alternative. In reaching this conclusion, the dissent stated that HDC "sought a *second increase*" in the loan commitment from HUD and that "presumably" the lender's willingness to continue with the project was conditioned on HUD agreeing to such an increase. (571 F.2d at 603; pp. 27A-28A) These statements are contradicted by the contemporaneous documents appended to the affidavit of Mr. Humphrey, the HDC official who was supervising the rehabilitation project. (R.21) Those documents were before Judge Gesell when he found on February 7, 1975 that HUD "insisted" on foreclosure. The dissenting judge relied exclusively on an affidavit filed July 18, 1975—after the District Court made its finding—of a HUD official who appears not to have had first-hand knowledge of the facts. Moreover, the HUD affidavit is squarely contradicted by a subsequent affidavit filed by Mr. Humphrey. (R.110)

HUD took title to Sky Tower in June of 1973 and contracted with a management firm to operate the property. (R.21, Humphrey Aff. § 26) Meanwhile, HUD had begun to develop a "program for operation" of the property, looking to an ultimate disposition in accordance with its regulations governing the subject.⁶

C. Displacement of the Tenants

More than a year later, with no further rehabilitation work accomplished, there were 72 families still living in 8 of the 19 buildings at Sky Tower. (571 F.2d at 592; pp. 3A-4A; 389 F. Supp. at 101.) After conducting "protracted and detailed studies," HUD concluded that five alternative disposition plans were available, four involving variations on continuing the rehabilitation and the fifth requiring demolition for the development of single family homes. The demolition alternative was selected, and the land was to be "made available for sale to developers for the construction of single-family homes for the middle class." (389 F. Supp. at 101; 396 F. Supp. at 1236.)

On September 27, 1974 HUD sent registered letters ordering the Sky Tower tenants to vacate their apartments by November 1, 1974, because "The Department of Housing and Urban Development has decided to raze the Sky Tower Apartments Project." (App. 13) While HUD did undertake to provide assistance, including \$300 in moving expenses, to certain of the departing tenants (*id.*), it did not comply with Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4621-38 (1970), *i.e.*, it neither assured the tenants that

⁶*Id.* § 20) HUD PROPERTY DISPOSITION HANDBOOK — MULTIFAMILY PROPERTIES, RHM 4315.1 (Feb. 1971) (hereinafter "*Property Disposition Handbook*."⁷)

decent, affordable replacement housing was available to them nor provided replacement housing payments to assist the tenants in paying higher rents. HUD's stated reason was its view that the tenants were not "displaced persons" within the meaning of the Act.

The consequence for many of Sky Tower's predominantly low-income tenants of being cast out in the District of Columbia's tight housing market was devastating. The affidavits which are part of the record in this case show that the rentals paid by some tenants more than doubled (App. 17, 61, 79); for some tenants the new rentals would exceed 50 percent of their income (App. 28, 56, 61). Tenants with children had particular difficulties finding new housing (App. 17-18, 20, 33) and in several cases had to settle for apartments with insufficient space, resulting in severe over-crowding (App. 40, 59).

D. The Litigation

Demolition began in December of 1974 and continued until stopped by a temporary restraining order Judge Gesell issued, after a hearing, on January 28, 1975; ten days later, the TRO was replaced by a preliminary injunction. 389 F. Supp. at 100. Judge Gesell found that HUD's decision to demolish Sky Tower was arbitrary and irrational and in violation of the agency's fundamental duty—indeed the principal reason HUD was created—to carry out the "national housing policy which Congress has developed, refined and implemented over a period of years by a series of enactments" 389 F. Supp. at 102. The sole criterion set forth in HUD's *Property Disposition Handbook*, *supra*—maximizing HUD's return on its investment—was held to be "an oversimplified and inappropriate premise." *Id.* Judge Gesell further declared that "Congress did not intend HUD to be a commercial lending agency." 389 F. Supp. at 103. He ruled that HUD's disposition of Sky Tower must im-

plement, not ignore, the national housing policy, and the disposition issue was remanded to HUD for reconsideration. See 396 F. Supp. at 1236-37. Judge Gesell found that issuing a preliminary injunction was necessary to stop all demolition, to maintain the property in livable condition insofar as possible, to permit tenants still at Sky Tower to remain there, and to give displaced tenants the opportunity to move back to their homes. Judge Gesell's action was in large part motivated by his finding, based on extensive affidavits, that "no comparable low-income housing of equal quality was available to any of the tenants at the time the demolition decision was made." 389 F. Supp. at 101.⁷

In another order, dated September 12, 1975, Judge Gesell ruled that the 55 tenants who vacated their apartments as a result of the registered letters dated September 27, 1974, were "displaced persons" within the meaning of the Act. (App. 86-88) That ruling was affirmed by the Court of Appeals, with one judge dissenting, in the decision under review here.

E. Events Subsequent to the Litigation

No Relocation Act assistance was provided to any of the tenants as a result of Judge Gesell's decision because his order provided for declaratory rather than injunctive relief. (App. 88) The decision of the Court of Appeals affirming Judge Gesell was, moreover, stayed on the Government's motion pending disposition of the case in this Court.

Meanwhile, the case had been remanded to HUD, at its request, to enable it to reconsider its 1974 decision to

⁷Judge Gesell found that the acute shortage of housing in the District of Columbia "has been particularly serious for low-income persons with large families, the very class Sky Tower serves." 389 F. Supp. at 101. The waiting list at the District's public housing agency was then "over 4,000 families, concentrated in the four-bedroom and larger category." According to Judge Gesell, only one other HUD-assisted project in the District "has any six-bedroom units whatsoever." *Id.*

demolish Sky Tower. Sometime in 1976, it arranged to transfer the property to the District of Columbia's public housing agency and to continue providing rent subsidies for the tenants. (571 F.2d at 594 n.17; p. 7A n.17) Additionally, rehabilitation of Sky Tower was to be resumed.

Eighteen of the 55 families who had moved as a result of the eviction notices moved back into Sky Tower after the District Court enjoined its demolition. (571 F.2d at 593; p. 6A) Presumably, more such families will be returning, for in early 1978 HUD and the District of Columbia agreed that all former Sky Tower tenants would be given a priority right to return, as apartments become available.⁸ (Brief for Respondents in Opp., Att. A) A number of families who live in another HUD-owned project in the District of Columbia, Congress Park, may also achieve much of the relief they sought in this action. HUD has already agreed to lower the rent for one such family to the level it was paying at Sky Tower. (Brief for Respondents in Opp., Att. B) HUD is taking this step to avoid letting the Government's decision to seek certiorari deny the plaintiffs "all the relief to which they would otherwise be entitled" by reason of the decision below. (*Id.*)

HUD has also acted on a broader front to alleviate the distressing problems caused when low-income families are displaced in circumstances in which HUD takes the position that the services provided by the Relocation Act are not available. HUD has determined that demolition of low-income housing may not take place without the personal approval of the Secretary,⁹ and instead such buildings must be repaired "unless there are compelling reasons not

⁸Unfortunately, little real progress has been made. The transfer of title to the District of Columbia agency did not actually occur until July, 1978, and thus no contract for rehabilitation work could be awarded until that date.

⁹HUD MULTI-FAMILY PROPERTY UTILIZATION TASK FORCE, FINAL REPORT, April 1978, at viii.

to repair them."¹⁰ These actions are consistent with HUD's policy decision that it should make every effort to avoid dispositions that would reduce the nation's already low stock of below-market-rent housing.¹¹

Finally, the pertinent committees of both houses of Congress, in reports dated May 15, 1978, have urged that HUD keep to a minimum those actions which will result in displacement of families from their homes and take steps to alleviate the hardships that occur when such displacements are unavoidable.¹²

SUMMARY OF ARGUMENT

The statute defines "displaced persons" to include persons who, *inter alia*, move from their homes, businesses or farms when a government agency, having acquired the property, issues a "written order . . . to vacate . . . for a program or project undertaken by a Federal agency . . ." The former Sky Tower tenants fall exactly within this definition. The Government contends that this "written order" clause applies only when the agency, in advance of acquiring the property, issues to the occupants a "written notice" to vacate. There is no such limitation in the statutory language. Moreover, the relocation regulations of the two agencies most heavily affected, HUD and DOT, are inconsistent with this interpretation. They show that, although relocation services are available when the agency issues a "written notice of intent" to acquire property, a "written order from the acquiring agency"—which presumably can be issued only after the acquisition takes place—also makes displaced tenants eligible for relocation services.

¹⁰*Id.* App. A (Memorandum from the Commissioner of FHA dated April 5, 1978 at 1).

¹¹*Id.* at e.g., I, II-21, VI-2.

¹²S. REP. No. 871, 95th Cong., 2d Sess. 49-50 (1978); H.R. REP. No. 1161, 95th Cong., 2d Sess. 23 (1978).

The overall intent of the Relocation Act fully supports our interpretation of the definition of "displaced person." The Act was plainly intended, through the use of broad, nontechnical language, to cover every situation in which a government agency acquires land for some public purpose and, either immediately or thereafter, persons are displaced from their homes or businesses or farms. Congress, in enacting the Relocation Act, sought to bring together in one comprehensive statute a number of specific relocation provisions that formerly had provided different types of services in circumstances that varied from program to program.

Where the tenants who are displaced, like those here, rely on the "written order" branch of the definition of "displaced person," it is necessary that the order have been issued "for" a Federal program or project. That was the case here, because the tenants were displaced when HUD made the decision, after considering a variety of available alternatives, to demolish Sky Tower and transfer the property to private ownership so that middle-income homes could be constructed in accordance with the District of Columbia master plan for improvement of the Anacostia area. It is not necessary that this "program or project" be the same one that caused the acquisition. In fact, relocation services are available under the "written order" branch of the definition even if the acquisition was not for a Federal program or project, although in this case the acquisition was an expected consequence of a subsidized housing program adopted by the Congress in Section 236 of the National Housing Act, and the displacement was an integral part of the same program. Moreover, on the facts of this case, HUD plainly had a choice either to allow the rehabilitation of Sky Tower to continue—at no increase in cost to the Government—or to take over the project and consider some other disposition.

For the foregoing reasons, the tenants who were displaced when the Government decided to demolish Sky Tower are "displaced persons" within the meaning of the Relocation

Act and therefore entitled to relocation services. Moreover, Section 206(b) of the Act expressly provides, without regard to whether the tenants fall within the definition of "displaced person," that HUD was required to assure that suitable and affordable replacement housing was available before it evicted these tenants from their homes. HUD did not carry out this explicit statutory mandate, and it is reasonable and appropriate that HUD be required to make the tenants' loss good by moving them into suitable housing as promptly as possible and by reimbursing them for the excess rents they have had to pay in the meantime.

ARGUMENT

This case involves Title II (and the definitions in Title I) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-38 (1970) (the "Relocation Act" or simply the "Act"), which applies to all Federal agencies, including HUD.¹³ The question presented by the Government's petition for certiorari is whether the former Sky Tower tenants are "displaced persons" within the meaning of the Relocation Act. Whether a tenant is a "displaced person" is very important to the tenant, typically a low-income family that meets great difficulty in finding—and affording—suitable replacement housing, especially in a city like Washington, D.C. A tenant who qualifies as a "displaced person" is entitled to

—relocation assistance, which includes assurance that decent affordable replacement housing is actually available to the tenants, 42 U.S.C. §4625;¹⁴

¹³Title II is codified as Subchapter II, "Uniform Relocation Assistance," of Chapter 61, Title 42, U.S. Code.

Title III of the 1970 Act, codified as Subchapter III, "Uniform Real Property Acquisition Policy," 42 U.S.C. §§ 4651-55, is not involved.

¹⁴As we show *infra*, pp. 34-35, the assurance that suitable replacement housing must be available is required whether or not the tenants meet the statutory definition of "displaced persons."

—where the only replacement housing available is at higher than affordable rentals, replacement housing payments to cover the difference (to a limit of \$4,000), 42 U.S.C. § 4624; 24 C.F.R. § 42.95 (1977); and¹⁵

—moving expenses, 42 U.S.C. § 4622.

I. If the Government Acquires Real Property and Thereafter the "Acquiring Agency," Pursuant to a Federal Program or Project, Gives Tenants a "Written Order" To Vacate the Property, Tenants Who Then Move Are "Displaced Persons" and Entitled to Relocation Act Services.

To determine whether the former Sky Tower tenants are "displaced persons," one should begin with the language of the statute, for that is the primary aid to determining its meaning. *St. Paul Fire & Marine Ins. Co. v. Barry*, 46 U.S.L.W. 4971 (1978); *United States v. American Trucking Ass'ns*, 310 U.S. 534, 543 (1940). That language should be read as it is commonly understood "in the speech of people," to use Justice Jackson's phrase. *NLRB v. Highland Park Mfg. Co.*, 341 U.S. 322, 324 (1951). Where the resulting interpretation is neither absurd on its face nor inconsistent with the statute's evident purpose, the Court's task is ended. *Commissioner v. Brown*, 380 U.S. 563, 571 (1965).

Congress defined "displaced person" broadly, in conformance with the generous purpose that inspired the

¹⁵A different mix of services is available when the "displaced person" is a homeowner rather than a tenant or where it is a business or farm, rather than a home, that is dislocated. See 42 U.S.C. §§ 4622(c), 4623, 4625(c)(4).

adoption of the Act. The definition is dual: A "displaced person" is one who "moves from real property" either

- [1] "as a result of the acquisition of such real property, in whole or in part,"

or

- [2] "as the result of the written order of the acquiring agency to vacate real property,"

when the displacement is "for a program or project undertaken by a Federal agency . . ." Act, § 101(6), 42 U.S.C. § 4601(6).¹⁶

The tenants here rely on the second branch of the definition, the "written order" clause, and not on the first, the "acquisition" clause.¹⁷ There must in either case be an acquisition, for even the "written order" clause applies only

¹⁶The full text of Section 101(6) is:

"The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

¹⁷Both lower courts in this case decided in favor of the tenants on the basis of the "written order" clause. The decision in favor of the Government in the companion case, *Alexander v. H.U.D.*, No. 77-874, was also based upon the "written order" clause. Decisions construing the "acquisition clause," which include *Caramico v. Secretary of the Dep't of Housing and Urban Dev.*, 509 F.2d 694 (2d Cir. 1974), and *Harris v. Lynn*, 555 F.2d 1357 (8th Cir.), *cert. denied sub nom. Harris v. Harris*, 434 U.S. 927 (1977), are not especially pertinent here.

when the order to vacate is issued by "the acquiring agency," and in either case there must be "a program or project undertaken by a Federal agency."

There is no doubt that on June 15, 1973 HUD acquired "real property" (Sky Tower) and thus was the "acquiring agency," that on September 27, 1974 HUD gave each tenant a "written order" to vacate his or her apartment by November 1, and that the tenants who brought this lawsuit moved from their homes "as a result of" these orders. Accordingly, the tenants are "displaced persons" eligible for relocation services under the plain meaning of the Act.

Despite this common sense reading of the statute, the Government urges that the two branches of the definition of "displaced person" are to be read conjunctively rather than disjunctively. (Petition at 7) It contends, moreover, that the "written order" that results in displacement must be directly related or connected to the acquisition, *i.e.*, that the acquisition and order must be part of a single Federal program or project. Indeed, the Government goes further: It says that the "written order" referred to in the definition must be one that *precedes* acquisition. The Sky Tower tenants say otherwise—that if there is an acquisition and then, separately, a written order to vacate, relocation services are available as long as the order, at least, is pursuant to a Federal program or project.¹⁸

A. A "Written Order" Issued After the Government Acquires the Property Is Covered by the Statutory Definition.

The language and structure of the statute do not produce the result for which the Government contends, and the contemporaneous regulations of two key agencies directly refute that contention.

¹⁸We would suppose that the acquisition would also be pursuant to a Federal program or project. If that is important, we show in Part II, *infra*, that the acquisition of Sky Tower meets this condition.

There is nothing on the face of the phrase "written order" which suggests that the order must be issued before an acquisition, and no court has so held. Had the Congress said that a displaced person is one who moves "as the result of an acquisition or a notice issued before acquisition," the Government would be right. But the Congress did not do so. One is displaced, says the language, if one moves "as a result of the acquisition" or "as the result of the written order of the acquiring agency."

There would be little need for a "written order" clause that applies before an acquisition takes place, for a displacement that precedes an acquisition but is caused by it is covered by the acquisition clause. *Lathan v. Volpe*, 455 F.2d 1111, 1124 (9th Cir. 1971).¹⁹ Indeed, it is difficult to understand how a "written order" could be issued by "the acquiring agency" until there is an acquisition by the agency; before acquisition takes place, the agency has no authority to "order" tenants to move from the property.

On the other hand, there is utility in a post-acquisition written-order clause: In many cases, tenants will not vacate their homes because a transfer of title to the Government has taken place, and indeed the tenants may not know when that legal act occurs. In other cases, the Government acquires property before it is needed for a project, perhaps as a hedge against rising property values or to forestall inconsistent development,²⁰ and the tenants are not evicted

¹⁹*Lathan* dealt with the common situation in which a proposed highway corridor has been formally designated as such but no property has yet been acquired, and indeed the project's design has not yet been approved. Those who reside in the area are permitted to make "hardship sales" to the State, rather than see their property decline in value during the years that may pass between corridor designation and condemnation. The court held that the hardship sales were covered by the acquisition clause and that, because of Federal financing of the highway project, Relocation Act services were available.

²⁰The Corps of Engineers appears to follow this practice. See 52 Comp. Gen. 300 (Nov. 28, 1972). This may also be the case with respect to a fourth Senate office building.

until long after. In all of these cases, it could well be contended that the "acquisition" had not caused the displacement, and Sections 4622 and 4625 of the Act both say that relocation services are provided "Whenever the acquisition of real property . . . will result in the displacement of any person . . ." The Congress, however, wrote a broad definition of "displaced person" to assure that it covered such post-acquisition evictions when they occur because of a "written order of the acquiring agency."²¹

There has been some confusion brought about by referring to the "written order" clause as a "written notice" clause.²² The word "notice" could more easily carry the meaning for which the Government contends. But that is not the word used in the statute. The word is "order."

Moreover, the regulations of the two agencies principally affected by the Relocation Act—HUD and the Department of Transportation ("DOT")²³—are in accord with our position. Displacements which qualify for Relocation Act services are those that result from:

- (1) The Government acquiring "title to or the right to possession" of the property;

²¹There is no doubt that the definition of "displaced person" was written to broaden the class of cases in which relocation benefits are payable. Even the Government's argument proves this, for the Government contends that displacements that result from a notice of intent to acquire, and not from an acquisition, are covered.

²²This error has been committed both in briefs and in opinions. Thus, the dissenting judge in this case states that, "whether the acquisition or the *notice clause* is involved, the acquisition or *notice of proposed acquisition* must be an 'acquisition for a program or project.'" (571 F.2d at 609; p. 41A) (emphasis added). Even the majority refers to the "written notice" clause, although the clause was held to embrace both pre- and post-acquisition transactions. (571 F.2d at 595; p. 9A)

²³See, e.g., H. R. REP. No. 1656, 91st Cong., 2d Sess., at 1-2 (1970) [hereinafter "*House Report*."]

(2) The "written *order* from the acquiring agency to vacate" the property;

"or"

(3) The agency issuing a "written *notice*" to the owner of its "intent to acquire the property." (Emphasis added.)²⁴

In other words, under these regulations relocation assistance must be provided if there is a "written notice" that the agency intends to acquire the property or a "written order" to vacate property already acquired. There would of course be no need for two separate clauses if they both mean the same thing, and therefore two different situations are envisioned by the regulations. (*Cf.* 571 F.2d at 597-98; pp. 13A-16A) We agree, and it was a written order to vacate, not a written notice of intent to acquire, that caused the tenants in this case to move from their homes.

B. Applying the "Written Order" Clause to Post-Acquisition Displacements is Supported By the Overall Intent of the Relocation Act.

The interpretation of the "written order" clause we advance here is by no means inconsistent with the general purpose of the Relocation Act and indeed is perfectly consistent with that purpose.

²⁴See HUD, RELOCATION HANDBOOK 1371.1 REV. at 4-4 (Feb. 20, 1975). Substantially the same regulations were in this HANDBOOK before revision (see issue of July 20, 1971 at 1-4, 6-2, 6-3; cf. 36 Fed. Reg. 8785-98 (May 13, 1971) (Federal financially assisted programs), as revised, 24 C.F.R. § 42.55(e) (1977).

See 49 C.F.R. § 25.11(a) (DOT relocation regulations applicable to, among others, the Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration and the Urban Mass Transportation Administration. See *id.* § 25.7 (1977))

Beginning in 1961, the Congress spent many years studying the enormous burdens that various Federal programs had imposed on persons who lost their homes, farms or businesses and who did not receive adequate compensation.²⁵ Particularly distressing was the plight of low-income persons, homeowners and tenants, who were frequently black or elderly or had large families.²⁶

As the Congress studied the various relocation programs it had enacted, it was struck by their inconsistency and inadequacy. For example, the Highway Act provided assistance to persons who moved as a result of a Government acquisition that in fact took place, 23 U.S.C. § 511(3) (1970) *repealed* by Section 220(a) (11) of the Relocation Act, 84 Stat. 1894, 1903 (1971); thus, a change in the Government's

²⁵This extensive review began with the creation of a Select Subcommittee in 1961 to study the problem under the forceful leadership of the late Representative Clifford Davis. The subcommittee issued a "comprehensive and authoritative" report in 1964. *House Report* 2. Thereafter, an Advisory Commission on Intergovernmental Relations also issued a report and extensive hearings were held. S. REP. No. 488, 91st Cong., 2d Sess. 4-7 (1969) [hereinafter "Senate Report"].

²⁶*House Report* 3, 12; *Senate Report* 6; 115 Cong. Rec. 31533 (1969), 116 Cong. Rec. 42137 (1970) (remarks of Sen. Muskie); 115 Cong. Rec. 31534 (1969) (remarks of Sen. Tydings); *id.* 6101 (remarks of Rep. Koch); *id.* 36049 (remarks of Rep. Ashley); 116 Cong. Rec. 40170 (1970) (remarks of Rep. Cohelan); *id.* 40171 (remarks of Rep. Bennett); *Uniform Relocation Assistance and Land Acquisition Policy: Hearings on H.R. 386 and Related Bills Before the House Committee on Public Works*, 90th Cong., 2d Sess. 356, 363-65, 371, 377, 388, 390, 393, 431, 440, 442, 487, 607, 613 (1969) [hereinafter "House 1968 Hearings"]; *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969: Hearings Before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations*, 91st Cong., 1st Sess. 1, 23, 37, 38, 44-45, 57, 85, 111-28, 162, 165, 186-87, 198-99, 204, 207, 252, 254, 275 (1969) [hereinafter "Senate 1969 Hearings"]; *Uniform Relocation Assistance and Land Acquisition Policies — 1970: Hearings on H.R. 14898, H.R. 14899, S. 1, and Related Bills before the House Committee on Public Works*, 91st Cong., 1st & 2d Sess. 3, 81, 102, 188-89, 191, 197, 337, 362-63, 438, 442-43, 458-60, 471, 1032 (1969-70) [hereinafter "House 1969-70 Hearings"].

plans could cause serious injury to persons who dislocated their homes or businesses in reasonable reliance on the original plan. On the other hand, the earliest relocation provisions relating to housing programs, Housing Act of 1954, Pub. L. No. 560, 68 Stat. 590, 599, were not limited to acquisition situations but covered persons displaced by "any form of governmental action," including the "closing or vacating of dwellings by public officials." S. REP. No. 1472, 83d Cong., 2d Sess. 26 (1954).

It was to replace this inconsistent and inadequate patchwork that the Congress began in 1965 to develop legislation to provide a single, generous relocation program for all Government agencies. See S. 1681, 89th Cong., 1st Sess., 111 Cong. Rec. 6532 (1965). And as each new problem was examined, sections of the original bill were expanded, and new sections were added, to assure that the congressional intent would be carried out:

—both the maximum moving expenses and the maximum replacement housing payments were increased;²⁷

—a new section provided that relocation assistance would not be deemed income for tax or Social Security eligibility purposes;²⁸

—relocation assistance was made mandatory rather than discretionary;²⁹

—a special definition was added to cover displacement of outdoor advertising;³⁰

²⁷Compare 42 U.S.C. §§ 4622-24 with S. 1681, § 2(c), (e); see *House 1968 Hearings* 605.

²⁸See 42 U.S.C. § 4636, no equivalent of which appeared in S. 1681; this provision first appeared as Section 211(g) of S. 1, 91st Cong., 1st Sess., see *Senate 1969 Hearings* 7, 16.

²⁹Compare 42 U.S.C. § 4630 with S. 1681, § 7; cf. *House 1968 Hearings* 613.

³⁰See 42 U.S.C. § 4601(7) (D), no equivalent of which appeared in S. 1681; *Senate 1969 Hearings* 253-54 (Sen. Baker).

—owners of small businesses who could not relocate without substantial loss of patronage ("Mom and Pop" stores) were given the option to accept a payment tied to average annual earnings in lieu of moving expenses;³¹

—certain cases where a State agency acquired property at the request of a Federal agency were expressly defined as being acquisitions by the Federal agency;³²

—in States where insufficient land was available for construction of replacement housing, Federal surplus land could be given to the State;³³

—cases in which there would be no acquisition, such as demolition of structurally unsound or vermin-infested structures, were expressly deemed to be acquisitions so that all services triggered by acquisitions would be available;³⁴

—the Congress authorized Federal agencies to construct replacement housing with funds ap-

³¹See 42 U.S.C. § 4622(c), no equivalent of which appeared in S. 1681; *Senate 1969 Hearings* at 79-82 (Sen. Tydings).

³²See 42 U.S.C. § 4628, no equivalent of which appeared in S. 1681; e.g., *House 1968 Hearings* 475, 486-87, 568-69. Section 5 of H.R. 386 (sponsored by Rep. Cohelan), H.R. 2845, (sponsored by Rep. Waldie), H.R. 3592 (sponsored by Rep. Minish), and H.R. 5528 (sponsored by Rep. Fountain) are identical.

³³See 42 U.S.C. § 4638; 116 Cong. Rec. 40169 (1970) (Rep. Cleveland).

³⁴See 42 U.S.C. § 4637, no equivalent of which appeared in S. 1681; 24 C.F.R. § 42.55(f); *Senate Report* 20.

Another non-acquisition is described in the legislative history: Where a private developer acquires land to construct a building for lease to the Federal government, that, too, is deemed a Government acquisition for purposes of the Act. See *House Report* 4-5; the Comptroller General ruled that in such cases the lease is deemed an acquisition for purposes of the Relocation Act. 51 Comp. Gen. 660 (April 21, 1972).

propriated for the project causing the displacement if replacement housing could not otherwise be made available;³⁵

—and, in perhaps the most expansive of all the changes made in S. 1681, a provision was added which states flatly that:

“No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c) (3) of this title, is available to such person.”³⁶

Indeed, this last provision does not seem to turn on the existence of an “acquisition” or of “displaced persons,” as that term is defined in the Act; instead, it states that “no person” can be displaced from his home by “any Federal project” unless suitable replacement housing is available. *See pp. 34-35, infra.*

The *House Report* referred to the Relocation Act as “a humanitarian program of relocation payments” designed to provide “positive action to increase the available housing supply for displaced low and moderate income families and individuals.”³⁷ Senator Percy summarized the intention of the Congress as follows:

“In public hearings the unfair treatment, inadequate payment, insufficient relocation assistance provided to those displaced is being brought out. Too often the complaints come from the very people the projects were designed to help,

³⁵42 U.S.C. § 4626(a), for which there is no equivalent in S. 1681; *House Report* 14-15.

³⁶42 U.S.C. § 4626(b), for which there is no equivalent in S. 1681; *see, e.g., House 1969-70 Hearings* 370 (Rep. Jacobs); *id.* at 375, 438.

³⁷*House Report* 3.

the poor and elderly living in the inner city. They experience most severely the economic and personal effects of relocation from familiar surroundings. If there are forgotten Americans, surely these people seem to qualify.

"No public project should result in financial loss or hardship to the people it displaces. Congress did not intend to place undue burdens on those forced to relocate

*"We must insure that anyone who loses property or a home as a result of a public project receives fair compensation under a uniform set of procedures"*³⁸

Senator Baker, now the Minority Leader of the Senate, surely was expressing accurately the intent of the Congress that had adopted the Relocation Act when he said in retrospect that "[w]herever a federal dollar reaches, there lie the rights and benefits guaranteed by the Act." 118 Cong. Rec. 12343 (Apr. 12, 1972).³⁹

³⁸Senate 1969 Hearings 57-58 (emphasis added).

³⁹Senator Baker and his Tennessee colleague, then-Senator Brock, together with Senator Muskie, led a congressional effort in 1972 to amend the Relocation Act in response to restrictive interpretations adopted by Federal agencies. Senator Baker described the amendatory effort as follows:

"I offered the amendment in response to an almost uncanny willingness and ability of governmental units to find ways around the mandate of the Uniform Act.

* * *

"New section 223 as proposed in S. 1819 is designed to make clear Congressional intent that *any* person displaced by *any* undertaking involving federal financial assistance is due the benefits of the Act I cannot emphasize too strongly my belief that new section 223 is not an 'expansion' of the Act's coverage. It is a strict statement of what the Congress clearly intended more than two years ago, and it is necessitated only by an extraordinarily narrow and parsimonious construction of the Act by executive government at every level."

In view of this history, it is exceedingly difficult, we submit, to exclude from the statutory definition of "displaced person" those families who are displaced by a "written order" that occurs after—and is not part of—the Government's acquisition of their homes. As with any complex statute, one can point to isolated bits of "legislative history" that suggest this or that limitation.⁴⁰ But there is

Proposed Amendment to the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970: Hearing on S 1819 and Related Bills Before the Subcommittee on Roads of the House Committee on Public Works. 92d Cong., 2d Sess. 58 (June 15, 1972) (emphasis added). (Because of disagreements between the House and Senate over, among other things, the precise coverage of the proposed new section, the bills each house passed went to conference, *see* 118 Cong. Rec. 37073 (Oct. 18, 1972), but no further action was taken before the 92d Congress adjourned on October 18.)

See also Tullock v. State Highway Comm'n, 507 F.2d 712, 715, 717 n.5 (8th Cir. 1974) (looking to the Act's "crystal clear" command in adopting its definition of "displaced person" rather than the "miserly" interpretation suggested by the Government); United States v. Braddy, 320 F. Supp. 1239, 1241 (D. Ore. 1971) (rejecting the Government's interpretation of the relocation provisions of the Federal-Aid Highway Act of 1968, 23 U.S.C. §§ 501-11 (1970) (repealed), because it was "too Procrustean" to serve the legislative intent).

⁴⁰Thus, the dissent below (571 F.2d at 607-09; pp. 37A-41A) relies on the following circumstance:

The bill that passed the Senate in 1969 defined a "displaced person" as one who moved "as a result of the acquisition or reasonable expectation of acquisition" of the property. S. 1, 91st Cong., 1st Sess., § 105(1)-(5), 115 Cong. Rec. 31372 (1969). (The Senate had earlier struck the limitation contained in the Highway Act, *i.e.*, that benefits are payable only if the acquisition in fact takes place. *See* Federal-Aid Highway Act of 1968, Pub. L. No. 90-495 § 30, 82 Stat. 815, 834 (codified initially at 23 U.S.C. § 511(c) (1970) (repealed 1971)).

The House changed the definition to read as it now reads; the reference to "reasonable expectation of acquisition" was replaced by the "written order" clause. No Representative explained the new language, nor did the *House Report*, except in commenting (at p. 4) that "if a person moves as the result of such notice to vacate, it makes no difference whether or not the real property is actually acquired," (emphasis added). Likewise, the Administration commented — in a

"no ambiguity in this Act to be clarified by resort to legislative history." *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 492 (1947). We urge the Court to interpret the Act in accordance with the clear and precise language which Congress employed and to be faithful to the generous purpose Congress sought to achieve by holding that the definition of "displaced person" is not to be limited to cases in which the "written order" that causes displacement precedes the Government's acquisition of the property.

II. The "Written Order" To Vacate Which HUD Issued in this Case Was Issued "For" a Federal "Program or Project."

The District Court found that HUD evicted the plaintiffs from Sky Tower "for" a Federal "program or project", namely, the demolition of the buildings by HUD to "eliminate blight" and to make way for the construction of

memorandum submitted for the record by Senator Percy, 116 Cong. Rec. 42139 (1970) — that

"[t]he House bill would limit the status of displaced persons to those who move as the result of the acquisition of, or written notice to vacate real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition or reasonable expectation of acquisition." (Emphasis added.)

Clearly, the House bill is narrower with regard to pre-acquisition displacements, for it is only when a "written notice" is issued that benefits are payable; Congress evidently preferred to have a precise triggering event rather than open the door to fact-oriented claims that persons moved in "reasonable expectation of acquisition," with the consequent difficulties of administration. *House 1969-70 Hearings* 137, 416, 1027-28. Carrying out this congressional intent, the HUD and DOT regulations cited at pp. 18-19, *supra*, likewise limit assistance in pre-acquisition situations to cases in which a *written notice* of intent to acquire is issued.

But this bit of legislative history says nothing about the meaning of the term *written order* as it applies to post-acquisition displacements. Accordingly, it does not undercut the points we have made. See 571 F.2d at 597-98 n.32; pp. 14A-15A n.32.

middle-income homes in conformity to the District of Columbia master plan. 396 F. Supp. at 1236.⁴¹

This is unquestionably a correct finding, which the Court of Appeals affirmed under the principles of FED. R. CIV. P. 52(a). (571 F.2d at 595-96; p. 11A)

An affidavit by the director of HUD's area office in the District of Columbia indicates that, commencing more than a year before it issued the eviction orders, HUD undertook "protracted and detailed studies" to determine the disposition for the Sky Tower properties that "would best discharge the Secretary's duty within the contemplation of 12 U.S.C. 1713(l)," the statute that authorizes the Secretary of HUD to manage, develop or take other action with respect to acquired insured housing, and within the "statutory and regulatory parameters of Section 236 of the National Housing Act, as amended." (App. 51-52) These studies began more than a year before HUD issued the eviction orders, and indeed HUD's *Property Disposition Handbook*, referred to at p. 7, *supra*, expressly requires that, wherever possible, such studies begin before the Government acquires title to an insured project.

The demolition alternative ultimately chosen was designed to achieve several governmental purposes for the benefit of the public, in the opinion of this HUD official:

"a. This decision, in my view, provided the most economical, feasible and environmentally sound means of providing the area with low density, low income housing that meets with the city's objectives in its master plan (Washington Far Southeast '70).

⁴¹It is true that Judge Gesell ruled that HUD's decision to demolish Sky Tower was irrational and contrary to law. 389 F. Supp. at 102. But this ruling certainly does not mean that the orders to vacate were thereby *not* pursuant to a Federal program or project.

"b. Departmental studies concluded that the cost of rehabilitation under the alternative plans we had considered would be excessive, and would be non-productive as an effort to make this excessively blighted area a safe and decent place for low income families.

"c. In my view, the four other alternatives suggested for disposing of the project could not outweigh the proper interest of the Secretary in placing the property in a condition which afforded the most reasonable expectation of accomplishing the goal of providing the residents of the area with a decent environment and safe living conditions which dictated the removal of this ill-conceived project." (App. 52)

The Government argued in the Court of Appeals that the disposition originally planned for Sky Tower at the date of the displacements—demolition, with the property to be used for construction of single-family homes—was not a "program or project" under Section 101(6) because the Act applied solely to construction projects and not to demolition projects. The court flatly rejected this effort to constrict the broad reach of the statute:

"Although there is some suggestion in the government's brief that a 'program or project' means only 'a federal construction or rehabilitation project, such as public works or urban renewal,' there is no warrant in the statute for this limiting interpretation. Obviously, construction and rehabilitation projects will frequently be preceded by demolition. If the government means that demolition is a 'project' within the Act when the agency constructs a building in its place but not when the agency simply tears down without building up, the anomaly is obvious. HUD's man-

date is to increase the stock of decent, sanitary housing for low-income families—not to destroy existing housing. Congress clearly did not intend that tenants displaced by a simple decision to wreck their homes would receive less protection than tenants displaced by a constructive urban renewal project." (Footnote omitted.) (571 F.2d at 595; p. 10A)⁴²

The Government also argues that the pertinent Federal "program or project" is the one that existed at the time of *acquisition* and that the evictions must be for *this* program or project before Relocation Act services are available; it goes on to argue that the acquisition of Sky Tower was not a conscious Government decision, was therefore not for a program or project, and could not have triggered a right to Relocation Act assistance.

In part this argument follows from the Government's position that the "written order" clause applies only in anticipation of the acquisition. We have shown in Part I that on this point the Government is in error and that a "written order to vacate" properly follows rather than precedes an acquisition.

The Government is likewise in error in contending that the evictions must be pursuant to the program or project that led to the acquisition. As the Comptroller General has ruled, the time to determine whether Relocation Act services are available is when the tenants are evicted, not when the acquisition occurred. 52 Comp. Gen. 300, 304 (Nov. 28, 1972).

⁴²Judge Wilkey considered the interpretation limiting coverage to construction projects and excluding demolition projects to be so "simple-minded" and "clearly flawed," that he took pains to show that the Government could not have intended to make this argument. (571 F.2d at 605-07; pp. 33A-36A)

It follows that whether the acquisition was for a Federal program or project is not pertinent to whether Relocation Act assistance is available at the time of eviction. If it is important, however, that the acquisition have been pursuant to a Federal program or project and that the subsequent evictions be somehow related to that program or project, this condition is satisfied in this case. The acquisition was a fully expected and consciously planned-for result of the Section 236 program:

Section 236 was added to the National Housing Act, originally enacted in 1934, by the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476, 498 (codified at 12 U.S.C. § 1715z-1 (1976)). Its purpose was to provide a new method for carrying out the 1934 Act's policy of providing housing for low-income families. This would be accomplished by attracting private mortgage investment into the low-income housing market, thus reducing the direct expenditure of Federal dollars. The Federal Government (through HUD) would not only insure mortgage loans made for the specified purpose but would also pay interest supplements in order to reduce the mortgagor's effective annual interest rate to one percent. To qualify for this assistance, the mortgagor would have to agree to limit rents to a maximum of 25 percent of tenants' income, although rents could not be lower than a "basic rental charge" computed on the basis of the one percent interest rate.

The interest subsidy feature would of course require appropriations of Federal funds each year, but Congress also determined that the insurance program would require funding. Although the Section 236 program would require the payment of insurance premiums, this new program would be unlike other Federal insurance programs in that net losses were fully expected.⁴³ A Special Risk Insurance Fund

⁴³Compare, e.g., the Section 203(b) home mortgage insurance program (12 U.S.C. § 1709) and the Section 207 rental insurance

was established, and appropriations were expressly authorized to keep the Fund solvent. 12 U.S.C. § 1715z-3. As the Senate Report put it:

"Section 104 of the bill would establish, through a new Section 238 of the National Housing Act, a 'Special Risk Insurance Fund,' which would not be intended to be actuarially sound and out of which claims would be paid on mortgages insured under the new [section] . . . 236—assistance for rental and cooperative housing

* * *

"Since these programs cannot be expected to be operated on an actuarially sound basis if the insurance premium charge is to be set at a reasonable level, appropriations to the fund would be authorized to cover any losses sustained by the fund in carrying out the mortgage insurance obligations of these programs [I]t is intended that the Secretary be able to obtain appropriations to cover anticipated or projected losses as well as actual losses, in order to provide adequate operating funds during the long period required to liquidate properties." S. REP. No. 1123, 90th Cong., 2d Sess. 15 (1968) (emphasis added).

program (12 U.S.C. § 1713), which HUD operates "on a self-sustaining basis." HUD 1969 ANNUAL REPORT, p. 41.

Likewise, compare the housing investment guaranty program, operated by the Agency for International Development pursuant to the Foreign Assistance Act of 1961, Pub. L.No. 87-195, 75 Stat. 424, which is financed by guaranty fees and "operates without cost to the U.S. taxpayer." Baruch, *The A.I.D. Housing Guaranty Program*, STUDY OF INTERNATIONAL HOUSING, SUBCOMM. ON HOUSING AND URBAN AFFAIRS OF THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS, 92d Cong., 1st Sess. 1 (1971).

The Conference Report for the Special Risk Fund repeated the theme that Congress anticipated that the Section 236 program would encounter excessive costs. The Report made it clear, however, that the substantial assistance that would be provided by the new housing programs to low-income families was worth the anticipated special costs. The Report deleted a provision in the House bill that would have imposed "an annual business-type budget" on the Special Risk Fund. HUD was left solely with the admonition in the Report that it "give particular emphasis to this Fund in its annual reports and maintain its accounts in such a way that experience under this program can be readily evaluated." H.R. REP. No. 1785, 90th Cong., 2d Sess. 152 (1968).⁴⁴

Thus, default acquisitions by HUD under the Section 236 program—the program involved in this case—were expressly contemplated, are the subject of appropriations, and carry out the social policies of the National Housing Act. Although it has been held that Government acquisitions that are "random and involuntary" are not "acquisitions" within the meaning of the Relocation Act, *Caramico v. Secretary of the Dep't of Housing and Urban Dev.*, 509 F.2d 694 (2d Cir. 1974), that is assuredly not true where a Section 236 default occurs.⁴⁵ As the record in this

⁴⁴It is significant that in its first set of internal regulations for the Section 236 program, HUD specifically anticipated that "a mortgagee may be requested to assign its mortgage to FHA." Under these circumstances, it was determined that claims would be "paid in cash from the Special Risk Insurance Fund." RENTAL HOUSING FOR LOWER INCOME FAMILIES (SECTION 236), FHA 4442.1, at 3 (Oct. 1968).

⁴⁵In *Caramico*, following default and foreclosure, HUD acquired certain residential properties for which it had insured the mortgages under 12 U.S.C. § 1709. A related insurance provision, 12 U.S.C. § 1710, provided that in the event of default and foreclosure under the Section 1709 program, the mortgagee would receive the benefit of the insurance provided by FHA if the mortgagee promptly conveyed title to the property to FHA in compliance with FHA regulations. At the time the property in *Caramico* was insured, pertinent FHA regulations required

case shows, moreover, and as the District Court found, the acquisition of Sky Tower was definitely voluntary and deliberate. (*See pp. 5-7, supra.*)

Finally, as we have pointed out (pp. 26-29, *supra*), the disposition program that led to the decision to demolish Sky Tower was not wholly separate from the program that led to its acquisition. HUD's *Property Disposition Handbook* contemplates that HUD will begin considering disposition alternatives *before* it acquires the property, and the statute under which those alternatives are considered (12 U.S.C. § 1713(l)) expressly relates to disposition of insured housing projects which HUD has acquired.

In short, if it is necessary that the acquisition as well as the displacement be for a Federal program or project, that standard is satisfied in this case.

that following default and foreclosure the mortgagee tender possession of the property, unoccupied, to FHA. *See* 24 C.F.R. § 203.381 (1977).

Pursuant to the statute and regulations, the mortgagee required the tenant-plaintiffs in *Caramico* to vacate the property in order to fulfill the FHA insurance eligibility requirements. The Second Circuit found under these circumstances that the default acquisition by the FHA under 12 U.S.C. § 1709 was not the kind of "acquisition for a program or project" contemplated by the Relocation Act since it embodied "no conscious governmental decision," and was "involuntary" and "random." 509 F.2d at 698-99. The Court held:

"In sum, we believe that Judge Dooling was correct in holding that random acquisitions by the FHA of defaulted property are not acquisitions 'for a program or project undertaken by a Federal agency' within the contemplation of the drafters of the Relocation Act." 509 F.2d at 699.

We believe that the Second Circuit's interpretation of the Act, and its guiding principle of "voluntariness" are not supported in the statute and are antagonistic to the principles of uniformity and fairness expressed in the statute and pervasive in the statute's legislative history. Nonetheless, it is not necessary in this case for the Court to review the correctness of the *Caramico* ruling.

III. Suitable Replacement Housing Must Be Available Before Anyone, Even If Not Within the Definition of "Displaced Person," May Be Evicted From His or Her Dwelling For Any Federal Project.

It is clear from the facts that HUD evicted the Sky Tower tenants without being assured that suitable replacement housing was available. This violated the plain terms of Section 206(b) of the Relocation Act, 42 U.S.C. § 4626(b), which provides:

“(b) No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal Agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person.”

It is important to note that this section of the Act does not limit itself to persons who meet the definition of “displaced person” contained in 42 U.S.C. § 4601(6). Section 4626(b) enjoins that “no person” may be displaced from his or her dwelling because of “any Federal project” unless replacement housing is available. And by its cross reference to Section 4625(c)(3), this section defines replacement housing to mean housing that is not only “decent, safe, and sanitary,” not only equally accessible to public utilities and other facilities, but also

“at rents or prices within the financial means of the families and individuals displaced.”⁴⁶

⁴⁶The full text of 42 U.S.C. § 4625(c)(3) reads as follows:

“(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to —

By the enactment of Section 4626(b), Congress made it unmistakably plain that apart from particular specialized provisions it had written into other sections of the Act — such as keying relief for businesses or farms to "acquisitions" — there was to be no Federal displacement of people from their *homes* unless there was someplace else they could live that would be within their means and would not impose other heavy burdens.

There is no "legislative history" that explains this section, and no case has construed its language. There is therefore no basis not to apply it according to its plain terms. It may be suggested that the Court read into this section the definition of "displaced person." But to repeat: That phrase is *not* used in Section 4626(b). In the absence of compelling evidence to the contrary, it must be presumed that Congress intentionally included that phrase in other sections and just as intentionally did not include it here.

The consequence of HUD's violation of Section 4626(b) is that families were evicted from Sky Tower when they should not have been. Requiring HUD to remedy its error by placing the tenants in decent, affordable housing as promptly as possible and reimbursing them for losses they have suffered in the meantime is an eminently suitable result.

"(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived."

CONCLUSION

The decision of the Court of Appeals for the District of Columbia Circuit should be affirmed, with costs.

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